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IN THE

Supreme Court of the United States

October Term, 1966

No. 257

MATTHEW J. REDDEN,

Petitioner,

against

MICHAEL J. MURPHY, as Police Commissioner of the City of New York,

Respondent,

and

NEW YORK CITY MUNICIPAL CIVIL SERVICE COMMISSION,

Respondent.

MEMORANDUM IN REPLY TO RESPONDENT'S MEMORANDUM

ERNEST RASSNER,
Attorney for Petitioner.

IRWIN ASOFSKY,
RONALD PODOLSKY,
of Counsel.

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

This memorandum is respectfully submitted to correct the distortion and misstatement of fact by the Respondent Police Commissioner of the City of New York as set forth in the memorandum in opposition. It is simply not true as alleged by Respondent, that the relief sought in the state courts was held to be barred by the statute of limitations; or that relief was denied on the ground that the appointment of petitioner was a legal impossibility. At no time did any of the state courts rule on these issues, although argument to that effect was urged upon the courts by Respondent. The Appellate Division and the Court of

Appeals affirmed without opinion, although as set forth in the Petition and conceded in the memorandum in opposition the constitutional issues were duly presented.

Lynch, et al v. *New York, ex rel. Pierson*, 393 U. S. 52 (1934), cited by Respondent is distinguishable inasmuch as the federal questions in the instant case were necessary to the determination of the cause, and the judgment as rendered could not have been given without deciding them, for the basis of the relief sought was the denial of constitutional rights, in view of the fact that both the transcript of the proceedings upon which it was based and the very procedures followed therein, were challenged upon constitutional grounds. Significantly, at no point in the memorandum in opposition was any challenge made in fact or in law to the assertions in the petition of the denial of the constitutional rights of Petitioner.

Respectfully submitted,

ERNEST RASSNER,
Attorney for Petitioner.

IRWIN ASOFSKY,
RONALD PODOLSKY,
of Counsel.